

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ETHEL LOUISE STOTT,

Plaintiff-Appellant,

v

CITY OF FERNDALE,

Defendant,

and

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

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UNPUBLISHED

December 17, 2002

No. 235674

Oakland Circuit Court

LC No. 00-021732-NO

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant Michigan Department of Transportation's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews all the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

A governmental agency having jurisdiction over a highway is liable in tort for breach of the duty to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). A highway is defined as "a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway" but not alleys, trees, or utility poles. MCL 691.1401(e). However, the duty of the state and county road commissions to repair and maintain a highway and their liability for breach of that duty "extends only to the improved

portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel.” MCL 691.1402(1). This means that “[t]he state and county road commissions’ duty . . . is only implicated upon their failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage.” *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 183; 615 NW2d 702 (2000). “[I]f the condition is not located in the actual roadbed designed for vehicular travel, the narrowly drawn highway exception is inapplicable and liability does not attach.” *Id.* at 162.

In this case, plaintiff was walking along the top of a curb that bordered a sidewalk and separated it from the roadbed below. She caught her foot in a crack on the curb and fell. Because plaintiff caught her foot on that part of the curb that was not designed for vehicular travel, it did not come within the highway exception and thus the trial court correctly determined that defendant was immune from liability.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Mark J. Cavanagh